

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GARY ZIERKE,

Defendant.

4:08-CR-3067

ORDER

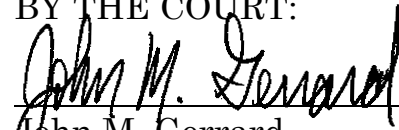
The defendant has filed a motion for compassionate release pursuant to [18 U.S.C. § 3582\(c\)\(1\)\(A\)](#), which permits a defendant (after exhausting administrative remedies) to move for reduction of a term of imprisonment based upon "extraordinary and compelling reasons." [Filing 453](#). The defendant argues that there is a disparity between his sentence and sentences imposed in later cases. [Filing 453](#).

The defendant's motion arguably implicates [U.S.S.G. § 1B1.13\(b\)\(6\)](#), which permits a sentence reduction when a sentence is unusually long and a change in the law has created a gross disparity between the sentence being served and the sentence that would likely be imposed today. The Eighth Circuit has held, however, that despite [§ 1B1.13\(b\)\(6\)](#), a nonretroactive change in sentencing law cannot, independently or in combination with other factors, constitute an "extraordinary and compelling reason" for a sentence reduction pursuant to [§ 3582\(c\)\(1\)\(A\)](#). [United States v. Johnson](#), No. 24-2393, 2025 WL 1949738, at \*2 (8th Cir. July 16, 2025) (citing [United States v. Crandall](#), 25 F.4th 582 (8th Cir. 2022); [United States v. Rodriguez-Mendez](#), 65 F.4th 1000 (8th Cir. 2023); [Loper Bright Enters. v. Raimondo](#), 603 U.S. 369 (2024)). That authority forecloses the defendant's argument. Accordingly,

IT IS ORDERED that the defendant's motion for compassionate release ([filing 453](#)) is denied.

Dated this 17th day of July, 2025.

BY THE COURT:

A handwritten signature in black ink, appearing to read "John M. Gerrard", is written over a horizontal line.

John M. Gerrard  
Senior United States District Judge